IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.86 OF 2007

Mandabai Ananta @ Vaman Katkari ...Petitioner

vs.

Rajesh Madhavi & Others ...Respondents

Mr.Sandesh Patil for the Petitioner
Mr.Jitendra Sachdev for Respondent No.2
Mr.R.M.Lokesh i/b M/s.G.S.Hegde & Associates for Respondent No.3.

CORAM: A.S.OKA,J.
DATE : JUNE 26, 2007.

P.C.:

1. Heard learned Advocate for the Petitioner, the learned Advocate for the second respondent and the learned Advocate for the third Respondent. The challenge in this Revision Application is to the Judgment and Order dated 17th September 2005 passed by the learned Civil Judge (S.D.), Thane. The Petitioner is the first Defendant and the second Respondent is the original Plaintiff. The first and third Respondents are the original Defendant Nos.2 and 3. The Petitioner applied under section 8 of the Arbitration and Conciliation Act,1996 praying for stay of the proceeding of the suit filed by the second Respondent and for a direction to the second Respondent to file the original Memorandum of Understanding dated 27th September 2002 on record of the suit and for return of the plaint with a direction to the second respondent to take necessary steps to resolve the alleged dispute as per clause no.6 of the said Memorandum. By the impugned Judgment and

Order, the said Application made by the Petitioner has been rejected. The Application has been rejected mainly on the ground that there is no averment made in the first statement of substance filed by the Petitioner as regards referring the dispute to the arbitration.

2. The learned advocate for the Petitioner submitted that the ground on which the Application has been rejected is totally erroneous. He invited my attention to the pleadings filed by the Petitioner in the form of reply. He submitted that in the said reply, the Petitioner has referred to the arbitration clause. He submitted that the learned trial Judge has completely misread the pleadings.

3. The learned Counsel for the second Respondent submitted that in the suit filed by the second Respondent reliefs are prayed for not only against the Petitioner but also against the Respondent Nos.1 and 3 herein. Placing reliance on the decision of the Apex Court in case of Sukanya Holdings (P) Ltd. Vs. Jayesh H. Pandya & another [2004 (1) Bom. C.R. page 413], he submitted that no order can be passed under section 8 of the said Act of 1996. In reply, the learned Advocate for the Petitioners placed reliance on the observations made by the Division Bench of this Court in case of M.V. "Sea Success I" Vs. Liverpool & London Steamship Protection and Indemnity Association Ltd. and another [2002

(2) Bom.C.R.page 537]. He placed reliance on the observations made in paragraph 51 of the said decision and submitted that in the present case the entire cause of action of the suit filed by the second respondent arises only as against the Petitioner and the Court will have to scan and scrutinise the allegations made in the plaint to find out whether forensic cleverness while drafting the plaint has been employed to get out of clutches of section 8 of the said Act of 1996

4. I have considered the submissions. The suit filed by the second Respondent is for perpetual injunction restraining the Petitioner from selling, assigning or giving development rights to third person in respect of the property more particularly described in prayer clause (a) of the plaint. A perpetual injunction is prayed against the Petitioner and the first Respondent herein restraining them from carrying out any construction on the suit property. Injunction is also prayed against the third Respondent restraining the said Respondent from transferring or dealing with the suit property. It is alleged in the plaint that the suit plot has been allotted by the third Respondent to the Petitioner. It is alleged that by a Memorandum of Understanding dated 27th September 2002, the Petitioner agreed to sell or assign her leasehold rights in the suit plot in favour of the second Respondent. Arbitration clause forms part of the said Memorandum of Understanding. It is alleged that as and when the suit plot is allotted to the

Petitioner, she has agreed to hand over the same to the second Respondent. It is alleged that the Petitioner is about to finalise a deal of the suit plot in favour of the first Respondent herein. That is the reason why injunction has been prayed against the third Respondent from transferring or dealing with any whatsoever manner in respect of the suit plot till the final disposal of the suit. There is a prayer for permanent injunction against the third Respondent from executing tri-partite agreement for transferring the suit plot in favour of any third person.

5. There is no contractual relationship between the second Respondent on one hand and first and third Respondents on the other hand. It will be necessary to refer to the decision of the Apex Court in case of Sukanya (supra). In paragraph 16 and 17 of its decision, the Apex Court has held thus :

"16. The next question which requires consideration is even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under section 8 of the Act. In our view, it would be difficult to give an interpretation to section 8 under which bifurcation of the cause of action, that is to say, the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement of the suit between parties who are

> parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed."

6. Going by the averments made in the plaint, in my view, what is held by the Apex Court is squarely applicable to the facts of the present case. Reliance placed by the learned Advocate for the Petitioner on the case of M.V.Sea Success (supra) will not help the Petitioner in as much what has been held by this Court is in the context of considering the prayer for rejection of the plaint by invoking the provisions of Rule 11 Order VII of the Code of Civil Procedure,1908.

7. It is true that the reasons recorded by the learned Trial Judge in paragraph 14 of the impugned order may not be correct. However, on plain reading of the plaint and considering the law laid down by the Apex Court, the application made by the Petitioner could not have been granted by the Trial Court.

8. There is no merit in the Revision Application and the same is accordingly dismissed.

JUDGE